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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,188	04/06/2004	Jean-Marc Francois	2002B098/2	2316

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EXAMINER

KRUE, KEVIN R

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/822,188

Applicant(s)

FRANCOIS, JEAN-MARC

Examiner

Kevin R. Kruer

Art Unit

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 and 31-60 is/are pending in the application.
- 4a) Of the above claim(s) 27-29 and 31-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 and 48-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on April 6, 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4104.12/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I in the reply filed on July 15, 2005 is acknowledged. The traversal is on the ground(s) that the intermediate product of Group II is not distinct over the claims of Group I because the manufacture of the final product requires winding the intermediate product onto a core roll for handling, storage, and transport. This is not found persuasive because the manufacture of the final product does not require the particulars of the intermediate product. The final product could be made by a materially different method, such as laminate of the recited layers. For example, the laminate taught in Touhsaent reads on the final product of Group I, but the manufacture of said laminate did not require the specifics of the intermediate product of Group II. Since the search for the invention of Group II would include subclasses not required for Group I, restriction is proper.

The requirement is still deemed proper and is therefore made FINAL.

The examiner apologizes for failing to respond to applicant's arguments in the Office Action mailed September 21, 2005.

Claim Rejections - 35 USC § 112

1. The rejection of claim 13 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention has been overcome by amendment to claim 11.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-14, 16-26 and 48-60 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,013,353 (Touhsaent) for reasons of record.

Touhsaent teaches a metallized multi-layer film comprising a substrate having a polymer core, on at least one surface of which is a polymer skin layer having a lower melting point than that of the core layer (abstract). The core may comprise a polyolefin such as HDPE or polypropylene (col 2, lines 29+) and is herein understood to read on the claimed first polymer layer. Said polymer should have a melting point of 125-190C (col 2, lines 29+). The skin may comprise a polyolefin (col 3, lines 10+) and the skin layer between the core layer and the metallized layer is herein understood to read on the second polymer layer. The skin layers may be co-extruded with the core layer (col 3, lines 40+). The exposed surface of the skin layer may be treated by flame or corona discharge treatment prior to coating to increase its adherence to other materials (abstract). A metal is deposited on the film substrate. Said metal may be aluminum (abstract). A polymeric low temperature sealable coating comprising an ethylene/ethylenically unsaturated carboxylic acid copolymer is deposited on the metal layer (abstract). Said ethylenically unsaturated acid may be acrylic acid, acrylate, methacrylate, or methacrylic acid (col 4, lines 31+). Said low temperature sealable coating is herein understood to read on the claimed transfer layer, and the heat sealable layer of claim 3. The laminate may further comprise a primer comprising titanates, or

polyethylene imine to the surface of the core layer opposite the metal layer (col 5, lines 53+). Said laminate may be used to label or package an article (abstract).

The polymer skin layer on the side of the core layer opposite the metal layer may have another coating deposited on the surface thereof (abstract). Said layer may comprise a sealable coat (col 6, lines 5+), a barrier coat such as PVDC (col 6, lines 34+), or a print layer (col 7, lines 1+). Said sealable layer may comprise the same polymer as the low temperature sealable coating described above.

With regard to claims 2, 10 and 49, Touhsaent does not teach the “transfer layer” was formed on the second side of the first layer with the de-bonded surface of the transfer layer removably bonded on the second side of the first layer, and the transfer layer was thereafter transferred to and fixedly engaged on the first side of the metal layer following winding the film on a roll after the metal layer is applied on the second layer. However, the courts have held that the method of making the product does not patentably distinguish a claimed product from a product taught in the prior art unless it can be shown that the method of making the product inherently results in a materially different product. In the present application, no such showing has been made.

With regard to claim 9, the skin layer remote from the metal layer is understood to read on the first layer and the core layer and other skin layer are understood to read on the claimed “multiple layer” second polymeric layer.

With regard to claim 19, the skin layer opposite the metal layer is understood to read in the claimed "at least one additional polymeric layer" and is understood to be heat sealable since it is taught to have melting point at least 5-50C lower than the core layer composition (col 3, lines 10+).

Claim Rejections - 35 USC § 103

4. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,013,353 (Touhsaent), as applied to claims 1-14, 16-26, and 48-60, and further in view of Akao et al (US 5,492,741) for reasons of record.

Touhsaent is relied upon as above. Specifically, Touhsaent teaches the metal layer provides the laminate with barrier properties (col 1, lines 1+) but does not teach the claimed thickness of the metal layer. However, Akao teaches the barrier properties of an metallized layer are a result effective variable that depends upon the thickness of the metal layer (col 6, lines 41+). Suitable thicknesses include 55-1200A. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to vary the thickness of the metal layer taught in Touhsaent. The motivation for doing so would have been to optimize the film's barrier properties.

Response to Arguments

Applicant's arguments filed February 9, 2006 have been fully considered but they are not persuasive.

With respect to the rejection of claims 1-14, 16-26, and 48-60 as being anticipated by Touhsaent, Applicant argues the claims recite a “transfer layer having a debonded surface and a metal bonding surface.” Applicant argues Touhsaent does not teach a transfer layer having a “debonded surface.” Said distinction is noted but does not patentably distinguish the claimed invention from the prior art. As noted in the non-final rejection, Touhsaent does not teach the “debonded surface” limitation. However, the examiner took the position said limitation is a method limitation that does not patentably distinguish the claimed invention from the prior art. Applicant has not shown said limitation structurally distinguishes the claimed laminate from the prior art. Furthermore, the specification fails to teach said “debonded surface” limitation structurally distinguishes the claimed invention from the prior art. Therefore, the rejection is maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R. Kruer whose telephone number is 571-272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin R. Kruer
Patent Examiner-Art Unit 1773